

1. AGREEMENT

- 1.1 These terms of trade (**Terms**) form the basis of the agreement between you, the customer (**you, your**) and Nemesys Limited (**we, us, our**) and apply to the provision of all services by us to you.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** For the purposes of these Terms the following definitions shall apply:

Business Hours means the hours of 8.30am to 5.30pm of Working Days unless otherwise mutually agreed.

Deliverable means the final version of any output or deliverable of the Services that we are to provide to you, as may be further described in a Statement of Work, but excludes any Products, Materials and Third-Party Software.

Hardware means, as the context requires, any physical computing device, component, or peripheral, whether individually or as part of an assembled computer system.

Intellectual Property means all or any of the following: trade marks and applications for registration of trade marks, trade name(s), patents and applications for patents, know-how, being technical and other information or trade secrets, copyright in any written material, plans, software object code or software source code, designs, whether or not registered or protected by copyright, and any other intellectual property.

Materials means any goods, materials, Hardware or miscellaneous goods or products that we supply to you in the course of providing the Services, but excludes Deliverables, Products and Third-Party Software.

Price means the price payable for the Services, including without limitation any Materials, Deliverables, Products or Third-Party Software provided we provide to you and calculated in accordance with clause 5, and is exclusive of and plus GST.

Product means any Software we own that we have standardised as a stand alone product offering which is available for license by customers, but excludes any Materials, Deliverables and Third Party Software.

Services means all services and advice we have provided or will provide to you and shall include without limitation general automation engineering consulting, support, project management, software development, testing and other similar engineering services, as further described in a Statement of Work, subject to any limitations, exclusions or restrictions set out in the Statement of Work or as specified by us from time to time.

Software means machine readable code, compiled to create a computer program (or part thereof), whether installed locally or otherwise available as a service.

Statement of Work means a written document, whether called a statement of work, work package definition, work request, purchase order, accepted quote or other similar name, that has been signed and/or acknowledged by you and us, that sets out (subject to any agreed change requests) the scope of Services that are to be provided by us.

Terms means these Terms, together with any Statements of Work, as both may be varied pursuant to clauses 3.5, 3.6 or 17.9 (as applicable).

Third-Party Software means any Software that is not owned by us, including without limitation open-source software.

Working Day has the meaning set out in the Companies Act 1993.

- 2.2 **Interpretation:** In these Terms, unless the context requires otherwise, or specifically stated, reference to:

- (a) the plural includes reference to the singular, and vice versa;
- (b) words importing one gender includes all genders;
- (c) any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the date of these Terms;
- (d) any reference to a clause is to a clause of these Terms;
- (e) monetary amounts are exclusive of and plus GST (if any), and the payer shall pay by the date specified such GST on any amount payable, unless otherwise stated in these Terms; and
- (f) 'including' (and its similar expressions) shall be interpreted as if followed by 'without limitation'.

- 2.3 **Headings:** Headings inserted in these Terms are for convenience of reference only and do not affect the interpretation of these Terms.

- 2.4 **Rights:** Unless the context requires otherwise, or specifically stated in these Terms, a right or power specified in these Terms may be exercised at any time.

- 2.5 **Negative obligations:** Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.

3. HOW TO ENGAGE, STATEMENTS OF WORK AND CHANGE REQUESTS

- 3.1 **Proposal request:** To purchase any Services pursuant to these Terms, you shall contact us to discuss your requirements with us. If we are able to assist you, then we shall prepare a draft Statement of Work for your consideration. Once agreed the parties shall sign the Statement of Work.

- 3.2 **Statement of Work:** We are not obliged to perform any Services until a Statement of Work has been signed both you and us. You agree that our acceptance of a Statement of Work (in whole or in part) is subject at all times to our sole discretion.

- 3.3 **Cancellation by you:** You cannot cancel a Statement of Work for convenience other than as set out in clause 11.2 without our prior written approval.

- 3.4 **Cancellation by us:** We will use reasonable endeavours to supply Services set out in a Statement of Work, but we do not guarantee supply, and may cancel a Statement of Work for convenience at any time (whether the Statement of Work has commenced or not) in accordance with clause 11.2.

- 3.5 **Instructions and directions:** You may provide instructions and directions to us in relation to the Services from time to time, and we shall use reasonable endeavours to comply with such instructions and directions. If we reasonably consider that such instructions or directions comprise a change request in respect of the Services or a Statement of Work, we shall notify you in writing within 20 Working Days after receipt of the instruction or direction, and prepare and provide a written change request in respect of the Statement of Work to you.

- 3.6 **Agreed change requests:** The parties may mutually agree to a change request in respect of a Statement of Work from time to time, and any such agreed change request in respect of a Statement of Work shall be recorded in writing and signed by both parties. A change request does not take effect until such change request has been recorded in writing and signed by both parties.

4. PROVISION OF SERVICES

- 4.1 **Statement of Work:** We will use reasonable endeavours to perform the Services as set out in each Statement of Work.

- 4.2 **Access:** You shall provide us with reasonable access, without delay, to your IT systems, network, equipment, software, data, policies, procedures, information, personnel, and provide sufficient administrator rights, to enable the Services to be performed. Our access to your site shall be subject to your reasonable and lawful policies, provided that such policies have been provided to us in advance.

- 4.3 **Equipment:** Except as set out in the Statement of Work, you shall provide all equipment and facilities necessary for us to perform the Services.

- 4.4 **Cooperation:** You shall ensure your personnel are co-operative, and provide reasonable assistance to us, to enable the provision of the Services.

- 4.5 **Warranty:** You warrant:

- (a) that you have, or will have at the date that the Services are scheduled, all necessary Third-Party Software licences and Hardware required to enable us to perform the Services, except for the Materials;
- (b) that you will only use the Deliverables for a proper purpose, and for your internal business purposes; and
- (c) that you will comply with all applicable laws in relation to these Terms.

- 4.6 **Diagnostic Software:** We may request your consent to use diagnostic software and other software tools from time to time, to assist us in the performance of the Services (**Diagnostic Software**). You will not unreasonably withhold or delay consent in respect of any request by us to install and use the Diagnostic Software, whether via direct or remote connection, on your IT system. Such Diagnostic Software remains our or our licensors' sole and exclusive property, and shall not form part of any software licence contained within, or associated with, these Terms. We shall own any output from the Diagnostic Software, and any Intellectual

Property contained within such output, and you may only use such output upon our specific consent, and we may impose any use restrictions that we deem necessary.

- 4.7 **Health and Safety:** Should the Services be carried out at your or other third-party sites, sufficient work space will be provided to our personnel to enable the provision of the Services, and such site shall be safe and secure, and comply with all applicable occupational safety and health legislation and policies. We will comply with your reasonable health and safety policies when on your site, provided that such policies are at least as stringent as ours, and are provided to us a reasonable period prior to the commencement of any Services to be performed at your site.

- 4.8 **No resale of Services:** You shall not resell any Services, unless we agree in writing in advance.

- 4.9 **Acceptance testing:** Unless set out in the applicable Statement of Work, the Services and Deliverables are not subject to any acceptance testing by you.

- 4.10 **Documentation:** Unless set out in the applicable Statement of Work, we are not required to provide any documentation, materials, source code or training to you in respect of the Services and Deliverables.

- 4.11 **Support and maintenance:** Unless set out in the applicable Statement of Work, we are not required or liable to support or provide maintenance in respect of any Services, Deliverables, Materials, Products or Third-Party Software.

5. PRICING

- 5.1 **Quote:** We may issue estimates or quotes to you from time to time. Any price set out in an estimate or quote:

- (a) is valid for the period specified in the quote, or if no period is specified, 30 days from the date of the estimate or quote;
- (b) the estimated or quoted price is exclusive of GST unless specifically stated to the contrary; and
- (c) is based on our knowledge and understanding of your requirements at the time the quote is given and can be varied or withdrawn by us if any circumstances change, including without limitation supplier pricing, or you requiring any additional Services.

- 5.2 **Service charges:** Unless otherwise specified in a Statement of Work, the Price for Services is charged on a time and materials basis as follows:

- (a) time spent by our personnel will be charged to you on an hourly basis, in accordance with our then current rate card, or as separately agreed by us in a Statement of Work.
- (b) Materials and Third-Party Software supplied in the course of performing the Services, if any, are charged on a cost price basis, plus freight and insurance;
- (c) Products are supplied on a list price basis; and
- (d) expenses incurred by us in delivering the Services, including without limitation travel, accommodation, meals and other out of pocket costs and expenses, on a cost price basis, provided that you have provided your prior written consent to such expenses being incurred.

6. INVOICING AND PAYMENT

- 6.1 **Invoice:** We will issue an invoice to you for the Price at the end of each month in which we have provided the Services to you. You agree to pay the Price to us by the 20th of the month following the date of invoice.

- 6.2 **Terms of Payment:** All amounts payable pursuant to these Terms are:
- (a) payable by electronic transaction, to our nominated bank account;
 - (b) in New Zealand dollars or as otherwise specified by us; and
 - (c) exclusive of, and plus, GST and all other taxes and duties which may be applicable.

- 6.3 **Failure to pay:** If you fail to pay any amount required to be paid pursuant to these Terms on or prior to the due date for payment, then we shall provide notice in writing to you identifying the failure to make such payment (**Payment Notice**). If you have not paid the amount within 14 days after the date of the Payment Notice, then without prejudice to our other rights and remedies under these Terms or at law, we may (in our sole discretion) take any one or more of the following actions:

- (a) immediately suspend these Terms, or any part of the Services or a Statement of Work;
- (b) cease the supply of Materials and Services, or continue to supply Materials and Services to you on a cash in advance basis;

- (c) if you have a credit account, reduce your credit limit;
- (d) remove, repossess or disable the Materials and/or Deliverables;
- (e) charge interest on all amounts due and payable at a rate of the then Official Cash Rate plus 10% per annum calculated on a daily basis until payment is received in full by us; and/or
- (f) list you with any debt collection agency, engage a debt collection agent or other third party to recover the outstanding amounts.

- 6.4 **Recovery of costs:** You shall reimburse us for any and all costs, charges or expenses (including legal costs as between solicitor and client and any debt collection agency fees) incurred by us or any third party in consequence of or in connection with your failure to pay any amount due pursuant to these Terms.

7. DELIVERY

- 7.1 Any delivery timeframe stated by us (whether in respect of Services or Materials, and whether stated in a Statement of Work or not) is an estimate only, and we shall not be liable should delivery take place earlier or later than stated.

8. WARRANTIES

- 8.1 **Services:** Subject to any limitations, restrictions or exclusions set out in the applicable Statement of Work, we warrant that:

- (a) we shall perform the Services:
 - (i) in a professional manner and in accordance with our standard operating practices and procedures;
 - (ii) in accordance with the requirements of the applicable Statement of Work;
 - (iii) in accordance with good industry practice; and
 - (iv) in accordance with applicable law; and
- (b) the Services shall be performed by personnel that are sufficiently skilled, trained and experienced to perform the Services.

- 8.2 **Deliverables:** Subject to any limitations, restrictions or exclusions set out in the applicable Statement of Work, we warrant that all Deliverables shall comply with the requirements of the Statement of Work for a period of 90 days after the date the Deliverables are delivered to you, or where acceptance testing applies as set out in clause 4.9 the point in time when you accept the Deliverables pursuant to the process set out in the applicable Statement of Work.

- 8.3 **Products:** Subject to any limitations, restrictions or exclusions set out in the applicable Statement of Work, any Product provided supplied to you is subject to the warranties set out in the applicable Product end user licence agreement, documentation and any other terms and conditions supplied by us to you.

- 8.4 **Third-Party Software:** With respect to any Third-Party Software:

- (a) we do not provide any warranty, but will use our reasonable endeavours to pass on any third-party warranty to you, if applicable;
- (b) we will provide reasonable assistance where you wish to make a claim against a warranty that is passed onto you; and
- (c) for the avoidance of doubt, we are not liable for any warranty provided by any third party.

- 8.5 **Warranty Breach:** Where you believe you have a valid claim against us in respect of a breach of warranty described in clauses 8.1 or 8.2, you shall notify us in writing, including full particulars of the alleged breach (**Warranty Claim Notice**).

- 8.6 **Result of Breach:** On our receipt of a Warranty Claim Notice, you shall provide full and unrestricted access to your IT systems for us to undertake testing, and we shall determine, in our sole discretion, whether the warranties in clauses 8.1 or 8.2 have been breached. In the event of breach, we shall either, as determined by us in our sole discretion, repair, replace, credit or refund that part of the Price actually paid by you in respect of the defective Services or Deliverables, and such remedy shall be your exclusive remedy in respect of such breach. If we determine that the warranty in clauses 8.1 or 8.2 have not been breached, we shall notify you in writing.

9. EXCLUSION OF IMPLIED WARRANTIES

- 9.1 The parties agree that they are each in trade, and are entering into these Terms for a business purpose. As such, the parties agree as follows:

- (a) the statutory guarantees contained in the Consumer Guarantees Act 1993, sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and

part 3 of the Contract and Commercial Law Act 2017 are excluded to the maximum extent permitted by applicable law; and

- (b) except as expressly set out in these Terms:
 - (i) the Materials, Services and Deliverables are provided on an 'as is' basis, without warranty of any kind; and
 - (ii) all warranties, conditions guarantees and liabilities, whether express or implied by law, trade, custom or otherwise, and whether relating to quality, fitness for purpose, suitability, operation, results, outcomes, implications, performance, quality, ownership, infringement or otherwise, are expressly excluded.

10. LIABILITY AND INSURANCE

- 10.1 **Restricted liability:** Neither party shall be liable to the other party for any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity, loss or corruption of data or exemplary damages or losses suffered by the other party or any third party resulting from any prior misrepresentation, breach of these Terms, or other dispute arising out of these Terms, whether contemplated by these Terms or not, and whether actionable in contract, tort (including negligence), statute, equity or otherwise.
- 10.2 **Maximum liability cap:** If, notwithstanding clause 10.1, we are found liable for any loss, including without limitation the loss set out in clause 10.1, such liability shall be limited to the Price paid by you to us for the Materials, Services or Deliverables that are the subject matter of the claim or loss.
- 10.3 **Indemnity:** You shall indemnify us in respect of all liabilities, costs (including but not limited to full costs of between solicitor and client), expenses, claims, demands, damages, disbursements and other expenses we incur, arising out of or incidental to your breach of these Terms.
- 10.4 **Backup:** For the avoidance of doubt, it is your exclusive responsibility to manage your internal processes, procedures or requirements in relation to data backup, data recovery and disaster recovery, and to ensure the integrity, protection, confidentiality and security of your data and information. Notwithstanding anything else in these Terms, in no circumstances shall we be liable for any data loss, corruption, restoration, recovery, reconstitution, recreation of data, or other similar and associated loss.
- 10.5 **Insurance:** Each party is responsible for maintaining its own public liability and professional indemnity insurance.

11. TERMINATION

- 11.1 **Termination with cause:** A party may terminate these Terms by providing notice in writing to the other parties in the following circumstances:
 - (a) the other party (**Defaulting Party**) commits, or in its reasonable opinion is likely to commit, a material breach of the terms and conditions of these Terms and such breach, if capable of remedy, is not remedied by the Defaulting Party within 20 Working Days of receipt by the Defaulting Party of written notice identifying such breach from the non-defaulting party;
 - (b) the other party commits a material breach of the terms and conditions of these Terms that is not capable of remedy;
 - (c) the other party is wound up, struck off, or bankrupted, enters liquidation or debt hibernation, is unable to pay their debts as they fall due, or a receiver, statutory manager, administrator or other similar person is appointed or process commenced in respect of the other party or their assets;
 - (d) the other party is convicted of a criminal offence; or
 - (e) the other party assigns, novates or otherwise transfers these Terms in breach of clause 17.8.
- 11.2 **Termination on notice:** We may terminate these Terms, or any part of the Services, including without limitation one or more Statements of Work, by providing 20 Working Days' notice in writing to you.
- 11.3 **Effect of Termination of Agreement:** If for any reason these Terms are terminated or expire, then unless otherwise agreed by us:
 - (a) we shall cease the provision of all Services, and all Statements of Work shall be at an end;
 - (b) we shall issue a final invoice for:

- (i) all Services performed and Materials, Products and Third-Party Software supplied to you up to the date of termination or expiry; and
- (ii) if:
 - (A) any Statement of Work has a fixed or minimum term, all amounts that you would have been required to pay by up to that expiry of the fixed or minimum term; or
 - (B) any Statement of Work does not have a fixed or minimum term, we may charge you for any non-cancellable and non-refundable costs and expenses we incur in relation to the Statement of Work, including without limitation for Materials, Third-Party Software or Products, and a fee in respect of any time that we have allocated to complete the Services that we cannot reasonably re-sell or re-allocate;
- (c) all amounts invoiced shall immediately become due and payable by you;
- (d) you agree to immediately return any property in your possession or control that is we own (including without limitation Confidential Information and Intellectual Property) to us, unless you have a licence to use such property that survives termination or expiry of these Terms. Once this obligation has been complied with, you shall delete any residual electronic or digital copies of such returned property, except to the extent captured by an automated backup procedure that is not generally accessible to your personnel or as reasonably required for your mandatory audit and compliance requirements; and
- (e) we shall, on receipt of payment of amounts owing by you, return any property in our possession or control that you own (including without limitation Confidential Information, Intellectual Property, data and materials) to you, unless we have a licence to use such property that survives termination or expiry of these Terms. Once this obligation has been complied with, we shall delete any residual electronic or digital copies of such returned property, except to the extent captured by an automated backup procedure that is not generally accessible to our personnel or as reasonably required for our mandatory audit and compliance requirements.

12. CONFIDENTIALITY

- 12.1 **Confidential Information:** All Intellectual Property and other information belonging to the parties which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of these Terms (**Confidential Information**).
- 12.2 **Non-disclosure:** Neither party shall, without the prior written consent of the other party, disclose any Confidential Information to any third party. A party receiving Confidential Information from another party shall ensure that it protects the Confidential Information to the same standard that it applies for its own confidential information, provided that it is not less than a reasonable standard.
- 12.3 **Permitted disclosure:** We may disclose such Confidential Information to our group companies (including subsidiaries and parent companies), to any subcontractors or independent contractors as reasonably required to perform the Services and to comply with our obligations under these Terms. Either party may disclose such Confidential Information to enforce these Terms, as required pursuant to any decision of a Court of competent jurisdiction and as required pursuant to applicable law.

13. COLLECTION AND USE OF INFORMATION

- 13.1 **Additional information:** If you are required to provide, and do so provide, information in relation to your employees, contractors or agents, to allow us to complete the Services set out in these Terms, you warrant that you have all necessary consents or authorisations required to provide such information to us for this purpose.
- 13.2 **Privacy Act:** The parties acknowledge their respective obligations pursuant to the Privacy Act 2020 and you agree that we may collect, use and disclose your personal information for purposes related to your dealings with us including but not limited to the supply of the Services, direct marketing, social media and provision of information about the Services. You have rights under the Privacy Act 2020 to access any personal information that we hold and to request the correction of such personal information. In addition, you consent to us providing electronic

marketing messages to you, unless you opt out by notifying us in writing or unsubscribing.

14. INTELLECTUAL PROPERTY

- 14.1 **Existing IP:** You agree that we retain ownership of all of our Intellectual Property rights existing at the date of these Terms, and all Intellectual Property rights created, produced or discovered in the course of performing the Services.
- 14.2 **Deliverables Licence to Customer:** Subject to your payment of all amounts payable pursuant to these Terms and the restrictions in clause 14.3, we grant to you, for you internal business purposes only, a non-exclusive, non-transferrable, worldwide, free of ongoing royalty, licence to use the Deliverables.
- 14.3 **Restrictions:** In respect of the licence under clause 14.2, you agree:
- not to rent, lease, lend, sell, redistribute, sublicense or allow access or use of any Deliverables, except in respect of you internal business purposes as contemplated by these Terms;
 - not to copy, decompile, reverse engineer, disassemble, reproduce, translate, adapt, vary or modify, attempt to derive the source code of, decrypt, or create derivative works of the Deliverables or our other Intellectual Property; and
 - ensure that any usernames, passwords, or other user credentials provided to you in respect of the Deliverables are only used by you, are not shared with any other person, and are kept secure and confidential.
- 14.4 **Data and Customer provided materials:** You warrant that all data and other materials (and the provision of such data and other materials to us) supplied to us does not infringe any third-party owned Intellectual Property rights or breach applicable law.
- 14.5 **Deliverables Licence to Nemesys:** If you own the Intellectual Property rights in respect of any Deliverable, you grant to us, for our internal and external business purposes, a non-exclusive, transferrable, sub-licensable, worldwide, free of ongoing royalty, perpetual licence to use the Deliverables.
- 14.6 **Products:** Where we supply any Product to you, such Product is licensed not sold to you, and we retain ownership of all Intellectual Property rights in respect of such Product, and the Product is licensed to you in accordance with the applicable Product end user licence agreement, documentation and any other terms and conditions supplied by us to you.
- 14.7 **Third-Party Software:** Any Third-Party Software supplied by us to you (whether as part of the Deliverables or otherwise) will be subject to additional license terms and conditions, which may include, without limitation, end user licence agreements, support agreements, interoperability matrices and/or other requirements of use (**Third-Party Terms**). The Third-Party Terms may be entered into with us as agent or reseller of the manufacturer, or directly with the third party. We will use reasonable endeavours to provide copies of the Third-Party Terms to you, and you agree that we may accept any Third-Party Terms on your behalf where we has first provided a copy to you. Should you wish to negotiate the Third-Party Terms, you must do so directly with the applicable third party licensor, but any such negotiation may delay our provision of the Services.
- 14.8 **General:** You agree:
- not to cause or permit any damage to, or to otherwise endanger, any of our Intellectual Property or our title to our Intellectual Property;
 - to notify us in respect of any actual or suspected infringement of our Intellectual Property; and
 - not to use any of our Intellectual Property other than as expressly permitted by these Terms.

15. SUBCONTRACTING

- 15.1 **Subcontractors:** We may subcontract all or any part of the Services unless expressly specified in a Statement of Work, and in such case, such restriction shall only apply in respect of the Services set out in that Statement of Work. Where we engage any subcontractor to perform all or any part of the Services, we shall ensure that the subcontractors comply with the terms and conditions of these Terms as if they were us, and we shall be liable for all acts and omissions of our subcontractors.

16. DISPUTES

- 16.1 In the event of any dispute between the parties in relation to these Terms (but excluding the payment of the Price) the parties will first seek to resolve such dispute by promptly giving notice to the other party and cooperatively endeavour to resolve the dispute. If the dispute remains unresolved the parties will first seek a resolution through the use of mediation or other informal method of resolution before pursuing arbitration or resolution through the Courts. Nothing in this clause shall prevent either party from obtaining urgent interlocutory relief.

17. MISCELLANEOUS

- 17.1 **Nature:** The parties agree that nothing within these Terms will create any relationship of employment, agency, partnership or joint venture between them. Except as expressly set out in these Terms, neither party will have any authority or power to:
- bind or commit any other party to an obligation;
 - act on behalf of or represent any other party; or
 - hold any other party out as having authority to act on its behalf as an agent.
- 17.2 **Non-exclusive:** The parties acknowledge and agree that these Terms are non-exclusive in nature, so that you may engage any other service provider to perform any services that are similar or identical to the Services and we may perform services that are similar or identical to the Services for any other customer.
- 17.3 **Order of precedence:** In the event of any conflict between the terms and conditions of these Terms and any Statement of Work, the Statement of Work shall prevail. Your standard terms of trade, purchase terms or other terms and conditions shall not apply in respect of the Services.
- 17.4 **Force Majeure:** We shall not be liable for delay or failure to perform our obligations pursuant to these Terms if the cause of the delay or failure is, directly or indirectly, beyond our reasonable control (**Force Majeure Event**). If a Force Majeure Event continues for 20 Working Days or more, or we are prevented from performing our obligations for 20 Working Days or more, we may terminate these Terms by providing notice in writing to you.
- 17.5 **Notices:** Any notices required to be given by the parties pursuant to these Terms will be given at the addresses set out in the parties' description, the parties' registered address or other address notified from time to time.
- 17.6 **Non-waiver:** Failure by us to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations we have under these Terms.
- 17.7 **Severance:** If any provision of these Terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.8 **No assignment:** You may not assign, novate or otherwise transfer your rights or obligations pursuant to these Terms, without obtaining our prior written consent. Any change of ownership or control in you shall be deemed to be an assignment of these Terms. Any attempted assignment shall not have effect, and shall be null and void.
- 17.9 **Amendments:** No amendment or variation to these Terms shall have effect unless recorded in writing and signed by the parties.
- 17.10 **Survivorship:** Termination or expiry of these Terms for any reason will not affect the rights and obligations of the parties that are intended to survive such termination.
- 17.11 **Entire agreement:** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of these Terms. Any prior agreement executed by the parties relating to the same or similar subject matter as set out in these Terms shall be automatically terminated on your acceptance of these Terms.
- 17.12 **Counterparts:** These Terms, or any Statement of Work, may be executed in counterparts (which may be electronic copies) and all of which, when taken together constitute the one document.
- 17.13 **Governing law:** These terms and conditions of trade shall be governed by the laws of New Zealand, and the courts of New Zealand shall have non-exclusive jurisdiction to determine any dispute arising out of the subject matter of these Terms.